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OFFICE OF PETITIONS

In re Application of :
Edmonds and Comito : DECISION REFUSING STATUS
Application No. 09/805,492 : UNDER 37 CFR 1.47(b)
Filed: 13 March, 2001 :
Atty Docket No. DIVA/246DIV3 :

This is a decision in response to the petition under 37 CFR 1.47(b) filed on 22 October, 2001.

The Office apologizes for the delay in responding to the present petition and regrets any inconvenience to petitioners.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(b)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor.

FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.

Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

The above-identified application was filed on 13 March, 2001, without an executed oath or declaration. Accordingly, on 26 April, 2001, Initial Patent Examination Division mailed a Notice to File Missing Parts of Nonprovisional Application requiring an executed oath or declaration, the statutory basic filing fee, additional claim fee(s) and a surcharge for their late filing. A two (2) month period for reply was set.

In response, on 22 October, 2001, petitioners filed the present petition, surcharge, statutory basic filing and additional claim

fees, and petition fee. Authorization for a four (4) month extension of time was also filed.

With regards to the petition under 37 CFR 1.47(b), petitioners assert that the non-signing inventors did not sign and return the declaration after having been sent the application papers.

A grantable petition under 37 CFR 1.47(b) requires:

(1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee;

(4) a statement of the last known address of the non-signing inventor;

(5) proof of proprietary interest, and

(6) proof of irreparable damage.

The petition lacks item (5).

In regard to item (5), petitioners have not shown sufficient proprietary interest in the subject matter to justify filing of the application under 37 CFR 1.47(b).¹ Petitioners may provide proof by showing a copy of the employment agreement between the non-signing inventor and the Rule 1.47(b) applicant (company); a copy of an assignment agreement showing that the invention disclosed in the application is assigned to the Rule 1.47(b) applicant, or a legal memorandum signed by an attorney familiar with the law of the jurisdiction stating that a court of competent jurisdiction would by the weight of authority in that jurisdiction award the title of the invention to the Rule 1.47(b) applicant.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions

¹ MPEP 409.03(f).

By hand: Customer Service Window
 Mail Stop Petition
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22134

Telephone inquiries related to this decision should be directed
to the undersigned at (571) 272-3231.



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